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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,706	04/02/2004	Louis J. Petrozziello	REM 3.0-002	1196
530	7590	02/10/2006		
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER FERGUSON, MICHAEL P	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/816,706	<b>Applicant(s)</b> PETROZZIELLO, LOUIS J.	
	<b>Examiner</b> Michael P. Ferguson	<b>Art Unit</b> 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7 and 9-14 is/are allowed.
- 6) ☒ Claim(s) 15-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/18/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Fattore (US 4,767,419).

As to claim 15, Fattore discloses a combination including a fence and a protective guard comprising:

the fence having vertical posts **14,20,24** with upper ends and a top support bar **12** extending between the vertical posts;

a tubular member (outer sheet **50**) having first and second ends, an outer surface extending between the first and second ends, an inner surface extending between the first and second ends, the inner surface defining an interior space, and a slot extending between the inner and outer surfaces and the first and second ends of the tubular member, wherein the tubular member is secured over an upper edge of the fence so that upper ends of the vertical posts and the top support bar are captured within the interior space of the tubular member; and

insulation material **48** disposed in the slot and within the interior space of the tubular member for sealing the interior space of the tubular member (Figures 1-4).

As to claim 16, Fattore discloses a combination comprising first and second attachment flanges extending from the outer surface of the tubular member (outer sheet **50**) on opposite sides of the slot and a securing element in contact with the attachment flanges for securing the attachment flanges together with a portion of the fence positioned between the attachment flanges (Figures 2-4).

As to claim 17, Fattore discloses a combination wherein the tubular member (outer sheet **50**) and the first and second attachment flanges are integrally formed with one another (Figure 2).

As to claim 18, Fattore discloses a combination wherein the insulation material **48** includes a resilient material disposed in the slot of the tubular member (outer sheet **50**) and caps (closed ends of outer sheet **50**) sealing the first and second ends of the tubular member (outer sheet **50**; Figure 2 and 3).

As to claim 19, Fattore discloses a combination comprising a spacer **52** positioned within the interior space of the tubular member (outer sheet **50**) and in contact (via insulation **48**) with the inner surface of the tubular member for preventing the tubular member from sagging between the vertical posts **14,20,24** (Figure 3).

3. Claims 15-17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoke (US 5,328,156).

As to claim 15, Hoke discloses a combination including a fence and a protective guard comprising:

the fence having vertical posts **16** with upper ends and a top support bar **28** extending between the vertical posts;

a tubular member **30** having first and second ends, an outer surface extending between the first and second ends, an inner surface extending between the first and second ends, the inner surface defining an interior space, and a slot extending between the inner and outer surfaces and the first and second ends of the tubular member, wherein the tubular member is secured over an upper edge of the fence so that upper ends of the vertical posts and the top support bar are captured within the interior space of the tubular member; and

insulation material **44** (ribs **44** are made of a plastic material which is inherently capable of electrically insulating tubular member **30**) disposed in the slot and the interior space of the tubular member for sealing the interior space of the tubular member (Figures 1-4).

Applicant is reminded that the orientation of an object is based upon the angle at which it is viewed.

As to claim 16, Hoke discloses a combination comprising first and second attachment flanges extending from the outer surface of the tubular member **30** on opposite sides of the slot and a securing element in contact with the attachment flanges for securing the attachment flanges together with a portion of the fence positioned between the attachment flanges (Figure 2).

As to claim 17, Hoke discloses a combination wherein the tubular member **30** and the first and second attachment flanges are integrally formed with one another (Figure 2).

As to claim 20, Hoke discloses a combination wherein the fence is a chain link fence including a wire mesh secured to the top support bar **28** and the vertical posts **16** (Figure 1).

Applicant is reminded that the orientation of an object is based upon the angle at which it is viewed.

***Allowable Subject Matter***

4. Claims 1-7 and 9-14 are allowed.
5. The following is a statement of reasons for the indication of allowable subject matter:

As to claim 1, Fattore discloses the claimed combination with the exception of wherein the spacer is in contact with the tubular member and the top support bar for preventing sagging of the tubular member between the vertical posts.

As to claim 12, Fattore discloses the claimed combination with the exception of comprising a spacer positioned within the interior space of the tubular member and in contact with both the inner surface of the tubular member and the at least one top support bar.

There is no teaching or suggestion, absent the applicant's own disclosure, for one having ordinary skill in the art at the time the invention was made to have modified the combination as disclosed by Fattore to have the above mentioned elemental features.

***Response to Arguments***

6. Applicant's arguments filed November 12, 2005 have been fully considered but they are not persuasive.

As to claim 15, Attorney argues that:

Fattore does not disclose a combination comprising *insulation material disposed in the slot and within the interior space of the tubular member* for sealing the interior space of the tubular member.

Examiner disagrees. As to claim 15, Fattore discloses a combination comprising insulation material **48** disposed in the slot and within the interior space of the tubular member (outer sheet **50**) for sealing the interior space of the tubular member ( Figures 1-4).

As to claim 15, Attorney argues that:

Hoke does not disclose a combination comprising *insulation material disposed in the slot and within the interior space of the tubular member* for sealing the interior space of the tubular member.

Examiner disagrees. As to claim 15, Hoke discloses a combination comprising insulation material **44** (ribs **44** are made of a plastic material which is inherently capable of electrically insulating tubular member **30**) disposed in the slot and the interior space of the tubular member **30** for sealing the interior space of the tubular member (Figures 1-4).

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (571)272-7081. The examiner can normally be reached on M-F (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3679

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
MPF  
02/02/06



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